

60. In late August 1991, Linder and Sample-Day agreed to form the limited partnership and apply for the Eldon channel. Under their partnership agreement, Sample-Day contributes services only, sweat equity. Sample Ex. 1, p. 4. Sample-Day understands that, as the general partner, she is fully liable for the construction and operation expenses of the partnership. TR 129.

61. Linder did not envision at the time that he became involved in Sample that the Eldon station would make station KKSI more valuable. Ottumwa is the largest community within the signal coverage contours of KKSI and Sample's proposed Eldon station. At the time that Sample's application was filed, KKSI derived approximately 30% of its revenue from Ottumwa. Currently, it derives about 50%. TR. 338. If Rivertown receives the Eldon construction permit, it will take some advertising revenue from KKSI and in this way compete in the marketplace. TR. 339. Linder also testified that in Mankato, Minnesota, and Eddyville, Iowa, two markets with which he is personally familiar, when a new station entered the market with attention-getting promotions, it stimulated the merchants' interest in radio and attracted attention away from newspaper and T.V. advertising. This made it easier to sell radio advertising and created increased sales and profits for the radio stations in the market. TR. 343.

62. Linder treats his interest in O-Town as an entirely separate business venture from his interest in Sample. As a

voting shareholder of O-Town, he has a voice in the operation and management of station KKSI. There has never been any discussion between Sample-Day and Linder regarding the joint operation or programming between KKSI or O-Town and the proposed Eldon station. He has not spoken about these subjects with anyone. O-Town has made no arrangements, and has no plans or understandings with Sample or Sample-Day regarding the Eldon station. There are no plans or arrangements to have any type of joint relationship between the two stations. Sample Exs. 2, 3.

63. There are no arrangements or understandings, express or implied, for any other party including, but not limited to any officer, director or shareholder of O-Town Communications, Inc., except for the disclosed passive interest of Linder to have any ownership in or relationship to Sample or its Eldon, Iowa, station. There are no arrangements or understandings, express or implied, for any party to have any control over Sample or its Eldon radio station other than Sample-Day. Sample Ex. 1.

64. Upon agreeing to form the limited partnership, Sample-Day began to take steps to prepare and file the construction permit application. Sample Ex. 2, p. 3; Sample Ex. 3; TR. 301. Linder left Sample-Day in total charge of the application process. While he suggested some names and listings of consultants, Sample-Day was solely responsible for selecting and hiring all of the consultants she felt she would

need to prepare and file the Eldon application. After speaking with several potential communications counsel, she selected and retained Miller & Fields, P.C. (now Miller & Miller, P.C.). TR. 112. She relied on communications counsel to outline the steps required for preparing and filing the Eldon construction permit application. She spoke to several broadcast consulting engineers before retaining Owl Engineering. She selected McKay, Moreland & Webber as local counsel to assist in drafting the written limited partnership agreement to memorialize the understanding which she and Linder reached. The selection of these consultants was Sample-Day's decision entirely; Linder had no control over her decision to hire any consultant. Sample Ex. 2, p. 4; Sample Ex. 3, p. 3; TR 127, 152.

65. At Sample-Day's request, Owl Engineering sent a map to her showing the permissible Eldon transmitter site area so that she could begin to locate a suitable site. The map was identical to the first map which Owl Engineering sent to McVey. (See ¶ 46, supra) Rivertown Ex. 6, TR 217. She had difficulty interpreting this map and asked McVey for help in locating a site. TR. 258-259. At his suggestion, she obtained more detailed 7.5 minute survey maps directly from the U.S. Geological Survey Bureau. She did not understand the USGS markings and asked McVey's further assistance in locating a transmitter site. Sample Exs. 2, 5; TR. 259.

66. Sample-Day was concerned that the larger towns such

as Ottumwa might be over-saturated radio markets, did not want the Eldon station to have to rely entirely on them for revenue, and wanted to be able to offer signal coverage to advertisers in stable but less radioed areas such as Van Buren county to the south of Eldon. Sample-Day decided that she wanted to serve Fairfield, Bloomfield and Ottumwa, Iowa, and Van Buren county including such towns as Keosauqua, Iowa. By looking at the maps, McVey was able to point out the general land area which would allow her to serve the areas she had in mind. Sample Ex. 2, 5, TR. 209-210.

67. McVey told her that they would need to look at the area in person. He suggested that they first investigate land near the town of Leando which appeared from the map to be high, flat and near a highway and microwave tower. They went together and McVey pointed out several areas that appeared to be large enough, near a power line, accessible to the highway, and cleared of trees. Sample Ex. 2, 5. McVey and Sample-Day made a second trip to the same area to get more information. Sample-Day made a third trip on her own to look for alternate land. TR 154.

68. Sample-Day spoke with the owners of three potential tower sites and personally negotiated the terms of the assurance for the site she ultimately selected. No one assisted her. Later, when this site was sold, she pursued and obtained reasonable assurance of the site's continued availability from the new owner. She did not consult with Linder,

and he did not offer any advice to her with regard to selecting the tower site. Sample-Day first told Bruce Linder where the tower site would be after Owl Engineering completed the engineering portion of Sample's application. Sample Exs. 2, 3.

69. At the time that he assisted in locating the tower site McVey knew that Sample-Day had joined with Bruce Linder to file the application, but he had no knowledge of the terms of the arrangement between them. Neither Linder nor Sample-Day volunteered the nature of Sample with McVey. He never asked and could only assume that Bruce Linder would be a voting shareholder of Sample. Sample Ex. 5, p. 4; TR. 257. It was apparent to McVey that Sample-Day was taking the lead in preparing the application. Sample Ex. 5, p. 4.

70. McVey did not consult with Bruce Linder or anyone else about the site Sample-Day selected. Sample Ex. 5, p. 10. Although Sample-Day did not mention any concern to McVey about possible overlap with station KKSI, he assumed that she would have to select a tower site which would not cause overlap with the 70 dBu contour of KKSI. TR. 210, 261. McVey did not ask Sample-Day to confirm this assumption. He does not know what site she selected ultimately, and has never spoken about Sample's site with Bruce Linder. Sample Ex. 5.

71. Sample-Day developed the applicant's proposed construction and operating budget from a number of independent sources. As she was preparing this budget she requested and received a written price quote from Harris-Allied and she

solicited McVey's verbal opinions on the cost, availability and advisability of certain pieces of equipment which she was contemplating for use at the new station. TR. 270, 274. He also provided additional sources for equipment costs. She did not seek any budget information from Bruce Linder. In order for him to know the exact amount of financing to secure, Sample-Day advised Linder of the total amount needed for construction and operation, after the budget was finalized. He thought the numbers seemed reasonable and did not question how she arrived at them. The partnership paid McVey for all services rendered to Sample-Day. Sample Exs. 2, 3, 5, Rivertown Ex. 11, TR. 150, 177-178, 180-181, 204.

72. Sample-Day established the applicant's bank account and is the only person who has ever been authorized to sign checks on behalf of the applicant. She receives all invoices and bills for the applicant and has been solely responsible for paying all of the applicant's bills. Sample Ex. 2.

73. She established the local public inspection file in Eldon and arranged for publication of the public notices that the application was filed with the FCC and, later, that it had been designated for hearing. Sample Ex. 2.

74. She spoke with a property owner in Eldon about a potential lease of space for a broadcast studio. Sample Ex. 2.

75. Sample-Day received an invoice from Owl Engineering dated September 23, 1991. Rivertown Ex. 8. She assumed that the invoice reflected services she requested, and paid it

without verifying the charges. TR. 162. This bill includes a \$200 charge for a September 13, 1991, 70 dBu Overlap Study. While preparing for hearing, Sample-Day was reviewing documents with counsel when he asked her to explain the September 13, 1991, item. Sample-Day does not recall receiving anything from Owl Engineering dated September 13, 1991, and did not understand the charge. She then called Owl Engineering for an explanation. Owl Engineering told her that, indeed, she had not ordered any overlap study and that the charge was a mix-up and was meant for Mark McVey. TR 164, 165. Owl Engineering issued a corrected invoice to Sample and refunded the mischarged \$200. Rivertown Ex. 9. McVey was charged for the study. Rivertown Ex. 17; TR. 263, 281.

76. In consultation with her attorneys and engineer, Sample-Day has made all decisions and taken all other steps needed to prepare and file Sample's Eldon construction permit application. Sample-Day has never asked Linder to make a decision for her or to ratify any decision which she has made concerning the application or the proposed station. Bruce Linder testified that he has exerted absolutely no influence over her decisions concerning the Eldon station or the partnership and will not do so in the future. He has offered no advice. TR. 332. Sample Ex. 2, 3.

77. To Sample-Day, Linder's status as part owner of station KKSI has no bearing on the proposed Eldon station. She has not prepared, filed or prosecuted the construction

permit application for any purpose other than to acquire the construction permit, build and operate a new radio service in Eldon, Iowa, on behalf of Sample. Sample Ex. 2, 3.

78. Over the years that Brown and McVey have been acquainted, they have had a personal and professional relationship. Brown has often tried to convince McVey that the Linder family is taking unfair advantage of his services and that he is being used for his engineering ability. McVey has never believed this to be the case; he is thankful to know the Linders. Sample Ex. 5, p. 6; Rivertown Ex. 4, para. 2.

79. When O-Town first applied for station KKSI, McVey was the 100% voting shareholder of the applicant corporation. TR. 219. He paid about \$10,000 of his own money toward the preparation, filing and prosecution of the Eddyville application. TR. 230. When the person who agreed to fund the construction and initial operation of the station died, his heir did not want to assume the financial obligation. To find substitute financing, McVey visited four lending institutions without success. He also spoke with John Linder, who was interested in the project but no terms were discussed. McVey was familiar with John Linder because he had worked for him previously. McVey continued to search for financing. TR. 220, 280.

80. As the comparative hearing was approaching, McVey knew that he did not personally have the required funds so he reached an agreement with John Linder, the only party he had

located who would provide financing. TR. 281. John Linder and his father, Donald Linder, agreed to loan funds for the construction and operation of the Eddyville station and to pay for a settlement whereby a competing applicant would dismiss its application for cash proceeds. In exchange for the needed financing, McVey agreed to convey a 49% equity interest in O-Town to John Linder and his father with an understanding that they would acquire a controlling equity interest at some future point. TR 221-222. John and Donald Linder received a total of 49% voting stock in exchange for their settlement and construction loans to O-Town. They received an additional 31% through Commission approval of a FCC Form 315 application filed by O-Town in December 1990. TR. 225-227.

81. Sometime between March 8, 1991, and September 1, 1991, Bruce Linder acquired 25% of O-Town voting stock from Donald and John Linder. Before the conveyance occurred, McVey was consulted for his approval. At that point McVey had known Bruce Linder for about seven years. TR. 240. McVey works at KKSI and wants to see it and O-Town succeed to the greatest extent. He is quite pleased that the station has developed beyond his original expectations. Sample Ex. 5.

82. O-Town's development has not been without frustration for McVey, however. Many of his ideas for the station have been rejected by the other shareholders of O-Town. For example, recommendations about a different studio location, that the station should be more regional in its appeal, about

certain equipment purchases and about certain hiring choices have not been adopted. While he realizes that as a minority voting shareholder he cannot force O-Town to take any specific actions, he freely admits to becoming frustrated and even angry from time to time that more of his suggestions are not implemented. These feelings have sometimes resulted in mean-spirited statements about his fellow principals which are not based in fact. Sample Ex. 5.

84. At 10 p.m. on January 18, 1992, McVey arrived at station KKMI, Burlington, Iowa, to perform transmitter maintenance. As KKMI's general manager, Brown was present when McVey arrived. According to Brown, McVey brought up the subject of the Rivertown and Sample applications for Eldon and stated that the Sample application had been filed to delay the grant of Rivertown's, or to prevent Brown from getting the Eldon station. Also, that the Sample transmitter site had been selected to avoid city-grade contour overlap with KKSI, to enable Bruce Linder to have ownership interests in both stations, and that the Linders were using Carmela [Sample-Day] because of her minority status. Brown claims that McVey said that [Sample-Day] was bragging about what she was going to do with the Eldon station if her application is granted, and that, in [McVey's] opinion, she failed to recognize that Bruce Linder will be controlling her and the station. At approximately 11:15 p.m. McVey and Brown went to the KKMI transmitter site. Brown returned to the studios about midnight, in order

to feed test signals to the transmitter to assist McVey. McVey returned to the studios shortly after 1:30 a.m. He finished his work and left about 3:30 a.m. Brown emphasized in his written testimony that the conversation concerning Eldon occurred at the KKMI studios prior to going to the transmitter -- that is, between 10 and 11:15 p.m. -- not (emphasis in original) at 3 a.m. Rivertown Ex. 4, para 4. Under cross-examination Brown could not recall at what point during the period between 10 and 3:30 that the discussion about Eldon took place. TR 93-94.

85. McVey recalls that they spoke about the Eldon applications at about 3 a.m., while he was working on the transmitter. McVey does not have good or complete recollection of what was said; he was tired at that time. Sample Ex. 5.

86. McVey believes that Brown stated that he and John Pritchard had an interest in purchasing KKSI. Brown claims not to have made any such statement, but instead that a week earlier, on January 11, McVey called Brown, and asked whether Pritchard or Brown might be interested in purchasing KKSI. Brown responded (on January 11) that he was not personally interested, and that Brown would inquire of Mr. Pritchard as to his possible interest. On January 18, McVey asked if Brown had determined whether Mr. Pritchard was interested in pursuing a purchase of KKSI; Brown responded that Brown had mentioned the subject to Mr. Pritchard, but that Pritchard had not indicated whether he was interested in buying KKSI.

Rivertown Ex. 4, para. 9.

87. Further, McVey recalls that he was talking about some of his frustrations at KKSI, as these had been no secret from Brown during their friendship. Brown suggested that McVey should end his association with the Linders and join with Mr. Pritchard when he purchased KKSI. Sample Ex. 5.

88. If John Pritchard was considering buying KKSI, McVey believes that he probably volunteered that Pritchard could own the Eldon station, too. This was based on McVey's personal investigation in the summer of 1991 into whether O-Town could own and operate both stations. McVey believes that Brown misunderstood his statements. Neither Sample-Day nor any member of the Linder family ever indicated to McVey that Sample's tower site was selected to avoid city-grade signal overlap with KKSI, to allow Bruce Linder to have ownership in the Eldon and Eddyville stations. Sample Ex. 5, p. 9.

89. On March 17, 1992, Brown had dinner with Mark McVey. Brown alleges that during the dinner McVey brought up the Eldon situation. Brown reports that McVey stated that he had been asked by "the Linders" (he was not more specific) to find a transmitter site for the Sample application which would enable city-grade coverage of Eldon without overlapping the city-grade contour of KKSI; that Bruce Linder has a 20% interest in KKSI; that, if Sample is successful, they plan to simulcast KKSI; and that, although he was not familiar with the details concerning the arrangement between Carmela Sample

and Bruce Linder, he was certain that the Linders would not let her manage the Eldon station, because of her lack of management experience. Rivertown Ex. 4, para. 5.

90. McVey remembers Brown asking during dinner whether Sample Broadcasting would have an LMA with KKSI, should it get the station. He believes that he responded to the effect that whoever got the permit at Eldon should seriously consider a joint programming arrangement. TR. 267. McVey was not aware of Sample-Day's plans for operating the station and would have had no basis to describe as a fact anything about her programming plans. He had not spoken to Linder, Sample-Day, or anyone else about Sample's plans for the Eldon station, and had seen no documents describing any plans. McVey was unaware of any plans or proposals O-Town have had with respect to the Eldon station. Sample Ex. 5, TR. 256-257, 266.

91. McVey has spoken to Ms. Sample on occasion about the progress of her application; working for the same station they see one another from time to time. Their conversations in this area are generally short, and do not get into detail. Sample-Day has always been very enthusiastic about the opportunity the application presents for her to manage the Eldon station and get into station ownership. However, she has never described any of her plans with McVey. She has always come across to McVey as a serious and independent applicant. Sample Ex. 5, p. 9.

92. If he made the statements Brown alleges, McVey is

sure that they were the result of his feelings of frustration that more of his suggestions at KKSI were not adopted; they were not based on fact or personal knowledge. He had no knowledge of any facts and was not aware of discussions which would have led him to make such statements. He never discussed with anyone a possible motive for the filing of the Sample application. He has not seen anything in writing on this subject. He was not speaking on behalf of O-Town. If McVey made any of the statements ascribed to him by Brown, they were nothing more than off-hand comments made against Bruce Linder at a time when his frustration about KKSI was heightened. Sample Ex. 5.

93. McVey now knows that Sample-Day is to be in complete control of the Eldon station, and Mr. Linder will be passive. He has known Sample-Day and Linder for a number of years and has every reason to believe that their operation will be completely above-board and that they will conform to all representations they have made to the FCC. Sample Ex. 5, p. 8.

94. Brown believes that McVey was only speculating (on January 18, 1992) that Sample-Day would find that she would be controlled by Bruce Linder. Nothing McVey said in the several conversations on other issues led Brown to believe that McVey was only expressing his personal opinions rather than his knowledge of events and decisions which had been made at KKSI. Thus, Brown believes that it was reasonable to assume (emphasis supplied) that McVey's statements were both knowledgeable

and an accurate reflection of the intentions of O-Town in Sample's Eldon application. Rivertown Ex. 4, para. 8.

95. Collins left the employ of KKSI in August 1991, to accept employment at Station KKMI, where he continues to be employed.⁵ On approximately April 1, 1992, McVey telephoned Collins at KKMI, to inquire whether Collins would consider coming back to work for KKSI. McVey placed the call on his own, with no prior discussion with Bruce or Donald Linder. Bruce Linder and the KKSI general manager make the hiring decisions for the station. During the call McVey brought up the subject of tying KKSI and the Eldon station together. To Collins, these matters seemed loosely put by McVey, and more in the nature of "tossing ideas around" rather than any coherent plan. Rivertown Ex. 5, para. 2; TR 235, 236.

96. McVey testified clearly that he has no knowledge of the reasons why the Sample application was filed other than Sample-Day's statement that she wants to get into station ownership. He has no basis to believe that it was filed to delay action upon any other application or to keep another applicant from being granted. McVey has no knowledge nor reason to believe that anyone other than Sample-Day has been and will continue to be in full and complete control of the Sample partnership. Sample Ex. 5, p. 10.

97. Although he thinks it makes economic sense, McVey has

⁵ David Brown is general manager and Collins' supervisor at KKMI.

no knowledge of any plans or understanding to duplicate programming of KKSI on the Eldon station, regardless of who receives the construction permit. McVey is not aware of any discussions in which a possibility was considered by anyone with the authority to make such a decision at KKSI. Sample Ex. 5, p. 10.

98. McVey holds a First-Class Radiotelephone license and is a principal in a broadcast licensee. It is his responsibility and desire to be completely honest with the FCC. His testimony was candid and to explain the circumstances under which he might have made any comments to Brown about Bruce Linder, Sample-Day, or their proposal for a new station at Eldon. He regrets any comments he may have made which gave anyone the impression that KKSI and the Eldon station would be jointly operated or that Linder would control Sample-Day or be in charge of the Sample application. As he testified, he has no fact to support such comments. Sample Ex. 5, p. 10.

III. Conclusions of Law

A. Sample's basic qualifying issues.

99. The basic issues are whether Sample filed its application to delay the grant of Rivertown's application; whether O-Town is a real-party-in-interest to Sample's application; whether Bruce Linder will control Sample or its operation of the Eldon station; the nature of Sample's programming intentions with regard to the potential dupli-

cation of programming of station KKSI; and general questions of Sample's truthfulness before the Commission.

1. Delay action upon or grant of Rivertown's application.

100. Generally, the Commission looks to four areas to determine whether an application was filed with the motive of obstructing or delaying another application: 1) questions concerning a frequency study, 2) the timing of the application, 3) the good faith of the applicant, and 4) the economic and competitive benefit occurring from the application. Grenco, Inc., 28 FCC 2d 166 (1971).

101. The questions concerning a frequency search are not applicable here since the Commission assigned the Eldon channel in an FM rule making proceeding. Kaltrim Broadcasting Co., 45 RR 2d 1080 (Broadcast Bur. 1979). Similarly, the timing of the filing is immaterial since the applications were filed within two days of each other in response to a filing window for the Eldon channel.

102. Sample-Day had no motive to delay Rivertown. She saw the Eldon station as a career and business opportunity for herself and a chance to build a business in her chosen field in the same general geographical area where she was born and her father had been a member of the business community.

103. A competing application, without more, does not necessarily prove bad faith on the part of the applicants. Kaltrim, *supra*. There is nothing in the record which in-

dicates that Sample filed its application for the purpose of delaying action on, preventing a grant of Rivertown's application. McVey testified that he did not discuss with Sample-Day or Linder why they filed an application for Eldon, and that any comments he have made to the contrary were not based in fact. Neither Bruce nor Donald Linder indicated any unhappiness with David Brown. TR 268, 269.

104. The record is clear and unambiguous that Sample filed its application in order to acquire a broadcast station and for no other reason. Radio ownership is something Sample-Day has considered for a number of years. Bruce Linder saw the Eldon station as a potential investment. He had no reason to try to delay Rivertown's application. The record shows that other stations were being allocated in 1991 to this same area, e.g. Albia and New Sharon. Hence, there would be no benefit to KKSI to single out and retard the implementation of an Eldon station. Moreover, Bruce Linder has witnessed an increase in revenue by an existing station when a new station comes into the market, as it stimulates interest in radio advertising which generates greater sales.

105. Sample is a serious and legitimate applicant. There are no illicit or surreptitious motives for filing and prosecuting its application. There is no evidence that the Sample application was filed to delay the grant of any application or to delay the initiation of a new radio service. Accordingly, this issue must be resolved in Sample's favor.

2. Control Issues.

106. For a two-tier arrangement, such as a limited partnership, the Commission will determine "whether the applicant's described ownership structure accurately reflects the manner in which control will be exercised." Royce International Broadcasting, 5 FCC Rcd 7063 (1990) *recon. denied*, 6 FCC Rcd 2601 (1991); Coast TV 5 FCC Rcd 2751 (1990). To determine if a structure is bona fide for comparative purposes, the post-formation record is normally the best evidence of who will control the ongoing licensee. The manner in which the applicant was formed and the principals' pre-formation activities are probative only if the post-formation record is inconclusive as to who will control the ongoing licensee. Evergreen Broadcasting Company, 6 FCC Rcd 5599 (1991).

107. The test for the real-party-in-issue against Sample is whether O-Town has an ownership interest or is or will be in a position to control the operation of the proposed station. Sound Broadcasting Co., 6 FCC Rcd 6903, para. 4 (1991). In a related control issue, the presiding Judge authorized investigation into the extent of Bruce Linder's activities in the planning and developing of Sample's application.

108. After full investigation of the added issues by Rivertown, the record demonstrates that O-Town, its principals and Bruce Linder have had and will have no involvement or control over Sample, and that they have no connection other

than Linder's position as a passive limited partner. Under Sample's limited partnership agreement Linder is properly insulated from involvement under the Commission's non-attribution requirements for limited partners. Ownership Attribution, 58 RR 2d 604 (1985).

109. Sample is an entirely credible limited partnership before the Commission, distinct in all regards from the mala fides two-tier entities which have been exposed previously. See, e.g., Royce, supra, and Gloria Bell Byrd, 7 FCC Rcd 79 (Rev. Bd. 1993). Sample is in no way analogous to the contrived situation where virtual strangers form a two-tier entity in which the passive principal controls the applicant in a manner wholly inconsistent with its claimed business structure. See, e.g., KIST Corp., 102 FCC 2d 288 (1985); Fresno FM Limited Partnership, 6 FCC Rcd 6998 (1991).

110. Sample-Day has a college degree in communications and ten years of broadcast experience, including management. She has been interested in station ownership for a number of years. Sample-Day and Linder met in late 1990 and they had gotten acquainted over several months before the filing opportunity for Eldon arose. As a part owner of Sample-Day's employer, station KKSI, Linder was able to observe her work skills, how she interacted with others and her dedication. In addition to radio station activities, they spent some time together making a film in the Spring of 1991.

111. Sample-Day approached Linder about joining her in

the Eldon application. Linder planned to approach her about the matter at about the same time. They held discussions over the course of several days about their backgrounds and about the Eldon venture. Sample-Day agreed to get involved with Linder only after she satisfied herself that the Eldon station and contemplated business entity was right for her and that she was entirely willing, ready and able to devote the energy and time required to prepare and file the application and be in charge of the new Eldon station. They negotiated their 60/40 equity division. Sample-Day has been the driving force behind the preparation, filing and prosecution of Sample's application. As the sole general partner, she has made all decisions on behalf of the applicant and there is no reason to believe she will not continue to do so in the future.

112. Sample-Day's contributions to the partnership are in the form of services, not cash. However, as the general partner she is personally liable for the debts of the partnership. The relative monetary investment of the general and limited partners is of no decisional significance where, as shown herein, the applicant is bona-fide. Independent Masters, Inc., 104 FCC 2d 178 (Rev. Bd. 1986); Harry S. McMurray, 8 FCC Rcd 3168, para. 21 (Rev. Bd. 1993).

113. At their first discussion about the Eldon channel Bruce Linder told Sample-Day that he would not be able to be involved in the management of the partnership or the new station. He felt then and continues to feel that his own

employment demands his full attention and he would not have time to be involved in the Eldon station. He was candid about his desire to have a strong application with a local resident willing to work at the Eldon station. An applicant cannot be faulted for structuring a proposal around those factors that enhance a proposal. Alexander S. Klein, 86 FCC 2d 423, 431 (1981).⁶

114. Unlike other two-tiered applicants, Sample-Day unilaterally selected her counsel and engineer. She did not clear her choices with Linder. Sample-Day was entirely free to select any consultants she felt she would need to assist her in preparing and filing the application.

115. Linder agreed to secure financing for the applicant, and did so. In this regard, Sample-Day reviewed Sample's budget with Linder so that he would know the amount of funds he would have to obtain. Linder had no involvement in developing the budget and did not attempt to change or challenge Sample-Day's figures. He had no involvement in selecting Sample's tower site, or in any other aspect of Sample's application. In short, Linder's pre- and post-formation involvement in the application is entirely consistent with his position as a passive, fully-insulated limited partner. Evergreen Broadcasting Company, supra.

⁶ In Breaux Bridge Broadcasters, Limited Partnership, 4 FCC Rcd 581 (ALJ 1989), the fact that an owner assumed a passive role as the result of the Commission's comparative hearing criteria did not diminish the integration credit awarded.

116. One of Sample-Day's consultants was Mark McVey. Although a principal of O-Town, McVey's involvement with Sample was as an individual consultant. When he assisted Sample, he was working for himself, and was not acting on behalf of O-Town or any other entity or person. Sample-Day had known McVey for some time, knew he had experience in preparing an application for a new station, and respected his engineering ability. She hired McVey for certain tasks. The partnership paid him for his private consulting services. These services consisted of assisting in locating a tower site suitable for Sample-Day's service objectives. He also reviewed material gathered by Sample-Day and made suggestions as to the cost, availability and advisability of certain broadcast equipment. He did not review Sample's final budget and did not discuss any information or Sample's plans with Linder.

117. McVey did not know the details of the business relationship between Sample-Day and Linder, and presumed that Linder would be a voting shareholder of the Eldon entity as he is at KCSI. McVey did not attempt to verify this assumption. Building on this unfounded assumption and compounding his mistaken belief, he assumed further that the Eldon application's 70 dBu contour would have to clear the 70 dBu contour of KCSI.

118. In assisting Sample-Day to locate a tower site, McVey considered both her service objectives and his private

assumptions. It is coincidence that the tower site Sample-Day selected to meet her service objectives also avoided 70 dBu contour overlap with KKSI. McVey and Linder had no discussion about locating Sample's antenna tower.

119. Brown's testimony as to conversations he had with McVey about the Eldon applications does not persuade that McVey was speaking based on personal knowledge. There is no independent evidence to support a conclusion that McVey's statements to Brown, even if made as testified to by Brown, accurately describe the relevant facts. The issue is not whether Brown told the truth about what McVey said. It is whether Sample is a bona-fide applicant.

120. Sample-Day and Bruce Linder are the principals of Sample. The demeanor and candor of the potential permittee is what counts before the Commission. No facts have been presented to impeach or impugn Sample's credibility. The totality of the testimony of Sample-Day, McVey and Linder show clearly and unequivocally that Sample is a legitimate applicant and that its representations to the Commission have been completely truthful.

121. Brown concedes that McVey was only speculating that Sample-Day would be controlled by Linder. Further, Brown concedes that he has no confirmation of the truth of McVey's statements. Brown believes that "it was reasonable of [him] to assume that [McVey's] statements were both knowledgeable and an accurate reflection of the intentions of KKSI."

William Collins, a disinterested third party, believes McVey's various comments about the Eldon station were loose talk and not serious. From his own recollection of the overall context of the various conversations, McVey states that whatever he may have said, he was simply speculating and speaking in the "hypothetical". McVey affirms that any statements he made were not based on statements of Sample's principals, his knowledge of the arrangements between Sample-Day and Linder or on other fact.

122. McVey was not acting in the capacity of an O-Town principal during his conversations with Brown. He has no independent ability to make policy on behalf of O-Town. McVey harbors some frustration toward his fellow O-Town principals for not taking his advice at times. These feelings may have manifested themselves in various claims that Sample-Day would be controlled by Linder. However, he had no information to support these claims when they were made, and he knows that they are unfounded.

123. McVey contacted Owl Engineering to commission a study of an area to locate a transmitter site for the Eldon allotment as strictly his personal act. On his own, he wanted to check the feasibility of a possible application by O-Town. He paid Owl out of his own funds. Donald Linder, O-Town's majority shareholder, decided that O-Town was not interested in the Eldon allotment, and O-Town has taken no steps of any nature with respect to the Eldon allotment and is not a real-